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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,048	07/29/2003	Eric Wensing	TJK/405	9283
27717	7590	05/19/2005	EXAMINER	
SEYFARTH SHAW 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/631,048

Applicant(s)

WENSING, ERIC

Examiner

Christopher J. Novosad

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☒ Claim(s) 1-3 and 5-8 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cacossa (USP 6,231,270 B1), newly cited.

Cacossa '270 (Figs. 1-5) discloses a hole forming tool (10, Fig. 1) including:

a hollow shroud (tube 12) having a ground engaging portion (16) for engaging a soil surface;

a compressed gas delivery means (24) including an outlet (nozzle 36) disposed within the shroud (12, note particularly col. 3, line 15 and col. 5, lines 24-30 wherein the nozzle 36 may be located entirely within and above the open bottom of the shroud or conduit (12);

the outlet is disposed at a position within the shroud (12) so that when the ground engaging portion (16) of the shroud (12) is driven into soil, compressed gas emanating from the outlet (36) disrupts the soil inside the shroud to form a hole in the soil.

With regard to claim 2, the shroud (12) is a “tube” as broadly recited in the claim.

With respect to claim 5, the gas delivery means (24) of Cacossa includes a pipe (conduit 24) affixed to the inside of the shroud (12). In this respect see the specification (col. 4, lines 25-

Art Unit: 3671

27) which states that "A spacing device is used to help retain the conduit 24...within the hollow pile 12."

With regard to claim 6, the outlet (nozzle 36) is a nozzle including more than one flow path through which compressed gas emanates from the nozzle (36).

As to claim 8, note that the hole-forming device (10) of Cacossa includes a pair of handles (20) for grasping the tool to rotate and drive the tool into soil.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cacossa in view of Becker (USP 3,674,100), newly cited.

Claim 3 distinguishes over Cacossa in requiring that the tube be bent at a location spaced from the ground engaging portion to direct the disrupted soil away from the hole.

Becker (Fig. 1) teaches the use of a bent tube portion (17, 18) at the upper end of a hole-forming tool to direct the disrupted drilled soil away from the hole.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the upper end of the tube (12) of Cacossa with a bent tube portion for the purpose of deflecting the exhausted soil cuttings to the side of the device.

Claim 7 distinguishes over Cacossa in requiring that the ground engaging portion (16) is provided with serrations spaced around a periphery thereof.

Art Unit: 3671

Becker (Fig. 1) shows the ground-engaging portion of the hole-forming pipe 20 being provided with serrations or teeth (7) spaced around the periphery thereof.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the ground engaging portion of the shroud (12) of Cacossa with serrations or teeth (7) spaced around the periphery thereof for the obvious purpose of added efficiency in forming the hole.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jones discloses a method of sinking piles.


Woodruff discloses a method for forming holes in earth and setting subterranean structures therein.

Art Unit: 3671

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

May 15, 2005